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TO: Mail Stop: AF
Examiner: Loren C. Edwards
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

FROM: Bryan A. Wong

OUR REF: 20067.0021US01

TELEPHONE: (612) 455.3800

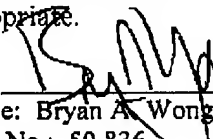
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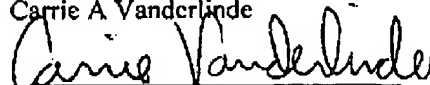
Title of Document: **PETITION TO WITHDRAW PREMATURE FINALITY OF
OFFICE ACTION UNDER 37 CFR 1.181 (3 pages)**Applicant: Klinkert et al.
Serial No.: 10/765708
App. Filed: January 27, 2004
Group Art No.: 3748

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By: 
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Reg. No.: 50,836

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TEL 612.455.3800 • FAX 612.455.3801
WWW.HSML.COM • MAIL@HSML.COM

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S/N 10/765,708

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Klinkert et al.	Examiner:	Loren C. Edwards
Serial No.:	10/765,708	Group Art Unit:	3748
Filed:	January 27, 2004	Docket No.:	20067.0021US01
Title:	EXHAUST ASSEMBLY		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on December 18, 2007.

By: 
Name:

Carrie Vanderlinde

Mail Stop: AF
Director of Technology Center 3700
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW PREMATURE FINALITY OF
OFFICE ACTION UNDER 37 CFR 1.181

Dear Director:

Applicants respectfully request that the present Petition under 37 CFR 1.181 be favorably considered and that the finality of the Office action mailed November 21, 2007 be withdrawn.

I. STATEMENT OF FACTS

On October 31, 2007, Applicants filed a Request for Continued Examination (RCE) application after receiving a final rejection mailed September 17, 2007. Along with the RCE application, the Applicants filed an Amendment, in which additional limitations, for example, "at least one of the rings having generally circular inner surface" were claimed in independent claim 17. In addition, new dependent claims 22-24 have also been added, in which claim 22 includes the additional limitation included in claim 17 and claims 23 and 24 include the additional limitation "each ring is in a plane perpendicular to the length of the tubular member."

On November 21, 2007, the Examiner issued a first Office action that was made final. Applicants' representatives contacted the Examiner and his supervisor and

requested withdrawal of the finality of the rejection, contending that at least claims 17 and 22-24 included subject matter not present in the earlier application. The request was denied.

II. POINT TO BE REVIEWED

The point to be reviewed is: whether the November 21, 2007 Office action was prematurely made final.

Under MPEP 706.07(h), the action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be final only if the conditions required by 706.07(b) for making a first action final in a continuing application are met. MPEP 706.07(b) states that the claims of a new application may be finally rejected in the first Office action only when (A) "the new application is a continuing application of . . . an earlier application", and (B) "all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application."

In the present case, the claims in the RCE application filed on October 31, 2007 should not be finally rejected because at least 706.07(b)(B) has not been met. Not all claims of the October 31, 2007 RCE application are drawn to the same invention claimed in the earlier application. For example, claims 17 and 22 require additional limitation of "at least one of the rings having generally circular inner surface," and claims 22-24 require additional limitation of "each ring is in a plane perpendicular to the length of the tubular member." Moreover, the amended claims would not have been properly finally rejected on the grounds and art of record in the next Office action if they have been entered in the earlier application, because neither at least one of the rings having generally circular inner surface nor each ring being in a plane perpendicular to the length of the tubular member has been disclosed or taught in the Pribil reference (U.S. Patent No. 1,530,324). Lastly, the October 31, 2007 RCE application is currently pending.

For at least these reasons above, Applicants contend that the November 21, 2007 Office action was improperly made a final rejection and that the finality of the Office action is premature. Withdrawal of the premature finality is respectfully requested.

III. ACTION REQUESTED

Applicants respectfully request the finality of the Office action mailed November 21, 2007 be withdrawn.

If any questions arise regarding this communication, the Director of the Technology Center is invited to contact the undersigned attorney listed below.

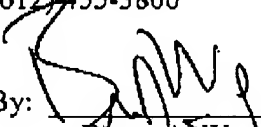
It is assumed that no petition fee is required in this case. However, if such fee is deemed to be required, it should be charged to the undersigned's Deposit Account No. 50-3478.

Respectfully submitted,



HAMRE, SCHUMANN, MUELLER &
LARSON, P.C.
P.O. Box 2902
Minneapolis, MN 55402-0902
(612) 455-3800

Dated: December 18, 2007

By: 
Bryan A. Wong
Reg. No. 50,836

BAW:cy